



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2009 Biennium

<b>Bill #</b>	HB0388	<b>Title:</b>	Restoration of land and water resources
<b>Primary Sponsor:</b>	Noonan, Art	<b>Status:</b>	As Introduced

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns              |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
<b>Expenditures:</b>				
General Fund	\$1,000,000	\$1,000,000	\$0	\$0
State Special Revenue	\$2,692,500	\$3,917,500	\$500,000	\$500,000
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$1,475,000	\$2,000,000	\$0	\$0
<b>Net Impact-General Fund Balance</b>	<u>(\$1,000,000)</u>	<u>(\$1,000,000)</u>	<u>\$0</u>	<u>\$0</u>

#### Description of fiscal impact:

HB 388 expands the Environmental Contingency state special revenue account to conduct restoration and remediation activities; allocates \$2 million from general fund over a period of two years; allocates \$475,000 in FY 2008 and \$1 million from the reclamation and development account to the environmental contingency account; changes the allocation of interest earnings from the resource indemnity trust. This bill allows state agencies that are liable for remedial action costs to be reimbursed from the orphan share state special revenue fund. Section 4 of this bill, which modifies 75-10-743, MCA, to require a determination of liability pursuant to the Controlled Allocation of Liability Act, or by a court of competent jurisdiction, may increase District Court workload.

### FISCAL ANALYSIS

#### Assumptions:

##### **Department of Administration (DOA)**

1. The DOA shall transfer \$1 million each fiscal year in 2008 and 2009 from general fund to the environmental contingency account.

**Department of Natural Resources and Conservation (DNRC)**

2. The DNRC shall transfer \$475,000 in fiscal year 2008 and \$1 million in fiscal year 2009 from the reclamation and development grants account to the environmental contingency account.
3. DNRC will expend \$1,745,000 in FY 2008 and \$2,175,000 in FY 2008 to support renewal resources projects in communities that face emergency or imminent need to prevent the physical failure of a project, or to address imminent natural resource restoration and remediation needs that are anticipated to have significant adverse impact to Montana's natural environment if not addressed in a timely manner, or to preserve vegetation, water, soil, fish, wildlife or renewable resources from a physical threat during an emergencies including fire restoration activities.

**Department of Revenue (DOR)**

4. Interest from the resource indemnity trust is distributed to twelve state special revenue funds. Three receive fixed allocations each biennium, five receive fixed allocations each fiscal year, and four receive annual percentage allocations of the remainder.
5. Under current law, the environmental contingency fund receives a fixed allocation of \$175,000 each biennium. This bill would allocate \$175,000 to the environmental contingency fund each fiscal year. This would increase revenue to the fund by \$175,000 in FY 2009 and FY 2011.
6. Revenue to the four funds with percentage allocations would be reduced by \$175,000 in FY 2009 and FY 2011. The percentage allocations to these funds and the resulting revenue reductions are shown in the following table:

Agency	Fund	Allocation %	Revenue Reduction
DEQ	Environmental Quality Protection Fund	9%	\$15,750
DEQ	Hazardous Waste/CERCLA	26%	\$45,500
DNRC	Reclamation & Development Grants Account	35%	\$61,250
DNRC	Renewable Resource Grant & Loan Account	30%	\$52,500

7. The Department of Revenue distributes resource indemnity trust interest. This bill would not affect the department's costs of making the distribution.

**Department of Environmental Quality (DEQ)**

8. Section 4 provides that a state agency that is liable for remedial action may submit a claim before or after remedial action is complete. The state agency may only ask for reimbursement of actual documented remedial action costs, excluding attorney fees, legal costs and operation and maintenance costs. This section also allows DEQ to use orphan share to address sites where a financially solvent potentially liable person does not exist to address the site.
9. DNRC is obligated to contribute 27.5% of future remedial actions costs at Reliance Refinery and the associated facilities. Under this bill, these costs will be funded out of orphan share. A cleanup remedy has not been determined yet, so future cleanup costs cannot yet be predicted. The remedy is expected to be determined in the 2009 biennium.
10. DNRC has an outstanding obligation for remedial action costs at the Reliance refinery site in the amount of \$1,300,000 (\$650,000 in each year) for the 2009 biennium. It is assumed that the cost would be at least \$1,000,000 (\$500,000 in expenditures each year) for the 2011 biennium.
11. DEQ would recover DNRC expenditures from orphan share under this bill to cover the DNRC obligation during the 2009 biennium and future biennia as necessary to achieve site cleanup.
12. There are 211 sites on the state superfund list at the present time. A significant number of these sites have an orphan share for which a state agency is liable. DEQ does not know how many sites are totally orphan. For the purpose of this fiscal note it is assumed that DEQ will spend monies out of orphan share for two orphan sites for which a state agency is liable (see below) during the 2009 biennium.
13. DEQ would spend \$100,000 (\$50,000 each year) out of orphan share funds for the 2009 biennium to remediate the Davis Post and Pole site to remediate groundwater contamination in order to protect

adjacent drinking water wells and to determine whether there are sites where dioxin contamination levels indicate additional surface soils cleanup are needed.

14. DEQ would spend \$85,000 (\$42,500 each year) out of orphan share over the 2009 biennium to remediate contamination at the Arro Oil Refinery to determine the nature and extent of contamination so that the site can be remediated to levels that provide appropriate protection to nearby residential areas.
15. Total Expenses for FY 2008 and FY 2009 are \$742,500 (\$650,000 to DNRC for Reliance Refinery + \$50,000 for Davis Post and Pole + \$42,500 for Arro Oil Refinery).
16. Total Expenses for FY 2010 and FY 2011 are estimated to be \$500,000 per year for Reliance Refinery.
17. Existing FTE would be assigned to manage these projects.
18. Changes the law to require an annual transfer of \$175,000 from the resource indemnity trust fund to the environmental contingency account instead of an amount of up to \$175,000 at the beginning of each biennium.
19. There will be an impact to the orphan share account within the state special revenue fund from the additional claims that may be submitted by state agencies. This impact is not estimable.

**Judiciary**

20. The Judicial Branch is unable to estimate the workload or fiscal impacts of this bill.
21. Section 4 modifies 75-10-743, MCA, to include a subsection that requires determination of liability for state agencies that are liable for remedial action costs and are seeking reimbursement from the orphan share fund. The determination of liability must be pursuant to 75-10-742 through 75-10-751, MCA, or by a court of competent jurisdiction.
22. Competent jurisdiction is assumed to be the district court in the county where the release occurred or where any potentially liable person under 75-10-715, MCA, resides or has a principal place of business or in the district court of the first judicial district. 75-10-749, MCA, under the Controlled Allocation of Liability Act (Sections 75-10-742 through 75-10-751, MCA), establishes this judicial jurisdiction.
23. The modification in section 4 of the bill, requiring judicial review, may increase District Court workload but the Judicial Branch is unable to estimate the impact on judicial workload or the fiscal impact. The cumulative impact of such legislation may over a period of time require additional judicial resources since the court dockets are already full throughout the state

**Section 1. Fund Transfers****Expenditures:**

Transfers (Dept of Administration)	\$1,000,000	\$1,000,000	\$0	\$0
Transfer (Dept of Natural Resources)	\$475,000	\$1,000,000	\$0	\$0
<b>Total Expenditures</b>	<b>\$1,475,000</b>	<b>\$2,000,000</b>	<b>\$0</b>	<b>\$0</b>

**Funding of Expenditures:**

General Fund (01)	\$1,000,000	\$1,000,000	\$0	\$0
State Special Revenue (02)	\$475,000	\$1,000,000	\$0	\$0
<b>Total Funding of Exp</b>	<b>\$1,475,000</b>	<b>\$2,000,000</b>	<b>\$0</b>	<b>\$0</b>

**Revenues:**

State Special Revenue (02)	\$1,475,000	\$2,000,000	\$0	\$0
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**Department of Natural Resources and Conservation (DNRC)****Expenditures:**

Benefits (Clean-up)	\$1,475,000	\$2,175,000	\$0	\$175,000
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**Funding of Expenditures:**

State Special Revenue (02) Env Cont Account	\$1,475,000	\$2,175,000	\$0	\$175,000
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**Department of Environmental Quality (DEQ)****Expenditures:**

Benefits (Clean-up)	\$742,500	\$742,500	\$500,000	\$500,000
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**Funding of Expenditures:**

State Special Revenue (02) Orphan Share	\$742,500	\$742,500	\$500,000	\$500,000
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**Department of Revenue (DOR)****Revenues:**

Environmental Contingency Account (02)	\$0	\$175,000	\$0	\$175,000
Reclamation & Development Grants (02)	\$0	(\$61,250)	\$0	(\$61,250)
Renewable Resource Grant & Loan (02)	\$0	(\$52,500)	\$0	(\$52,500)
Environmental Quality Protection (02)	\$0	(\$15,750)	\$0	(\$15,750)
Hazardous Waste/CERCLA (02)	\$0	(\$45,500)	\$0	(\$45,500)
<b>TOTAL Revenues</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**Net Impact to Fund Balance (Revenue minus Funding of Expenditures):**

General Fund (01)	(\$1,000,000)	(\$1,000,000)	\$0	\$0
Environmental Contingency Account (02)	\$0	\$0	\$0	\$0
Reclamation & Development Grants (02)	(\$475,000)	(\$1,061,250)	\$0	(\$61,250)
Renewable Resource Grant & Loan (02)	\$0	(\$52,500)	\$0	(\$52,500)
Environmental Quality Protection (02)	\$0	(\$15,750)	\$0	(\$15,750)
Hazardous Waste/CERCLA (02)	\$0	(\$45,500)	\$0	(\$45,500)
Orphan Share Account (02)	(\$742,500)	(\$742,500)	(\$500,000)	(\$500,000)

**Effect on County or Other Local Revenues or Expenditures:**

1. Some local governments may cost share and pay for part of the restoration project expenses.

**Technical Notes:**

1. Eligible agencies in section 4 will need appropriation authority to spend from the orphan share.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*